the sort. He proceeded "It was contended for the prosecution that these articles were the component parts of a still which had been dismantled. But in my view that is not so."

I think it quite clear that the learned judge did not decide that the dismantled components of a still are not a still. What he did decide was that a number of utensils do not become a still or parts of a still just because they could be put together and used for that purpose.

With that I entirely agree. Most moderately equipped houses contain fire places, baths, pots, jugs, drain pipes and other utensils which can be turned into a Heath Robinson still such as is used by most people who offend against the Excise Enactment.

Before the householder is convicted of keeping a still, there must be evidence from which it can be inferred beyond reasonable doubt that these innocent utensils are intended to be used as parts of a still. The same utensil may be used for an innocent purpose and for a guilty purpose a bath by day a vat by night.

In the case under appeal all the evidence—including the accused's statement from the dock—point to the exhibits being intended to be used as the components of a still. The accused said he found them in the lalang on the 15th October. If he did, he appears to have appropriated to his own use some one else's still.

Buried about his premises were several empty jars, some smelling of samsu. Near the kitchen fire place was the condenser of the still. The bottom of this condenser was clean and bright as the vapour of distillation would make it. There was a ring on it corresponding with the edge of an iron utensil which appeared to be used as a vat and which was also found, and this suggested that these two utensils were intended to be in contact.

A drainer for a still was found concealed between the wall and the eave of the house.

There was a hole in the side of the vat which served no domestic purpose. A drain pipe was also found. There was evidence that the drainer and the drain pipe had no domestic use, but both were useful as parts of a still and these four articles combined formed a complete still.

Of course, if the accused gives an explanation which the Court thinks may be true and which in fact raises a reasonable doubt as to his guilt, he is entitled to be acquitted. But it must be a reasonable doubt. In many cases the slightest explanation should suffice. But if the evidence shews that some utensils are not domestic utensils, or that they are used in conjunction when they are not so used for domestic purposes or if they smell of the product of distillation or if jars smelling of samsu are found buried on the premises, these are factors justifying the requiring of a full and adequate explanation.

There was abundant evidence upon which the magistrate could have convicted, and as he appears to have acquitted solely because, as he understood *Lim Chu Pian v. Public Prosecutor*,[1] there could be no conviction if the still was only seen in a dismantled condition, the Court thought it proper to reverse the acquittal and record a conviction rather than send the case back to the magistrate.

We imposed a small fine, not because the offence was not deserving of heavy punishment but because we considered that the respondent had been put to considerable expense in coming from Kajang to Ipoh and awaiting the hearing of the case in the latter town.

Terrell, J.A.—I have had the opportunity of reading the judgment of the learned President of the Court with which I agree and have nothing to add.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

January 23, 1940.

LIEW SIEW YIN (f) & ANOTHER
v.
LEE PAK YIN & ANOTHER.

[PERAK CIVIL SUIT No. 136 of 1939]

Land Code (Cap. 138) S. 166—nature of claim which entitles a person to present a caveat—land subject to trust for sale under a will—person entitled to a contingent interest in proceeds of sale entitled to enter caveat.

The plaintiffs in this case claimed as the widow and residuary beneficiaries of one Lim Seng Chew against the defendants, as executors of the will of the said Lim Seng Chew administration of the estate and other relief including the appointment of a Receiver.

A Receiver was appointed by the Court and, by an interlocutory summons the Receiver applied to the Court for directions on various matters including directions as to whether the Receiver could claim a Certificate of Production relating to Mining Leases Nos. 9919, 9920, 11649, 11073 and 12146 Ulu Kinta and the tributes of the

said Mining Lease. In his affidavit in support of the summons the Receiver alleged that "The said Mining Leases belonging to the Estate were transferred by the Defendants on the 9th day of August 1939 to one Chong Khee Hoong, but the transfer has not yet been registered by reason of a caveat lodged by the 1st Plaintiff. That notwithstanding the said caveat and non-registration of the said transfer, the said Chong Khee Hoong has claimed tribute from the said Mining Leases and taken over the Certificate of Production thereof."

Held, that irrespective of whether the plaintiffs' interest was vested or contingent and although the land was subject to a trust for sale the plaintiffs were entitled to present a caveat.

Cases referred to:—

(1) *Arunasalam Chettiar v. Ramasamy,* 1 F.M.S. L.R. 153.

(2) *Re a Caveat,* Innes 114.

(3) *Sockalingam Chettiar v. Mohamed Mydin,* Innes 197.

SUMMONS IN CHAMBERS adjourned into Open Court for argument.

H. S. Ong for the plaintiffs. The Trust for sale contained in the testator's will is admitted, but the discretion of the trustees should be exercised properly and in the interest of the beneficiaries. Where *cestuis que trustent* and the trustees hold opposite views, the Court should jealously scrutinise the transaction which bare trustees insist on putting through against the wishes of those beneficially entitled. He submitted that where land is subject to a trust for sale, the person contingently interested in the proceeds of sale, is also as much interested as regards the land, before sale. It cannot be said that the actual conversion of land into money is a material fact affecting the rights of the beneficiaries. Subject to certain contingencies the plaintiffs are entitled to the whole estate within three years. They are the persons to be damnified. The defendants are bare trustees.

He submitted that Section 166 of the Land Code covers contingent as well as vested interests. There is nothing in the wording of that Section to justify a narrow interpretation so that contingent interests are left without protection whatsoever. The will of the deceased is the "instrument of trust" within the meaning of that Section. The words "any person claiming title to or registrable interest in land" do not limit the meaning of the word "beneficiary." He submitted that any person having an equitable interest can enter a caveat. If the suggestion that a contingent interest in land is by its very nature incapable of being protected by means of a caveat is correct, then much of the wording of Section 166 would be meaningless verbiage. The plaintiffs have lodged the caveat to protect the interests of those who will ultimately be entitled. If the caveat is wrongful, the plaintiffs are liable to pay compensation under Section 176 of the Land Code.

John L. Woods (*Chin Swee Onn* with him) for the defendants. The only question in issue is whether the widows have a caveatable interest. If they have not, the caveats must be removed. The only reported cases in point are under older Enactments, but are interesting as showing that under a section of much wider wording much clearer interests were held not to be caveatable. Registration of Titles Enactment Section 70 *Voules* II 209 may be analysed as follows:—

Any person claiming to be interested

(a) Under any will settlement or Trust Deed

(b) or any instrument of transfer or transmission

(c) or under any unregistered instrument

(d) or otherwise howsoever

in any land . . . . may lodge a caveat.

Section 50 of the Land Enactment, *Voules* II, 95 is the same. Under these sections several cases were decided. *Re a Caveat*(2) indicates that a caveatable interest must be a definite right relating to land and capable of enforcement and (page 116) the Caveator must be in a position to institute a suit for specific performance of claim. An equitable mortgage by deposit was definitely not a caveatable interest apart from the lien section. *Sockalingam Chettiar vs. Mohamed Mydin*(3). A decree holder had no caveatable interest, *Arunasalam Chettiar vs. Ramasamy*(1). Under the Land Code Section 166 the right to lodge a caveat has if anything been restricted. That section can only be logically analysed as follows:—

(1) The Grantor of any instrument of Trust or
(2) a beneficiary or
(3) a guardian . . . . minor beneficiary or
(4) a Trustee or
(5) any person

claiming title to or registrable interest in land may present a caveat to the effect that such land . . . . The words "claiming title to or registrable interest in land" must refer to *each one* of the previous categories, otherwise the words "such land" are unintelligible. This is borne out by Section 167 in the words "nature of the interest in the land" and the words "ground upon which the claim is founded." Therefore now no

person can lodge a Caveat unless he can show a claim to title or to some registrable interest. In this case the only claim is under a Will of which the defendants are the Executors. The Will contains directions to sell, call in and convert and to invest the residue. No beneficiary can therefore have any title to or registrable interest in any land. Further the particular Caveator in this case takes no interest in the residue unless she survives the Testator by five years and is not then re-married. The interest therefore is not vested except so far as maintenance between death and distribution is concerned. *Williams* on Executors page 791 and pages 795 to 798. This case clearly falls under the second rule and it is not under the "interim interest" exception to the second rule because maintenance

(a) is not co-extensive with the interest and

(b) covers the children also.

The bequests are clearly conditional. *Williams* page 812. Furthermore even if interests are vested, which is not admitted, they are only in the estate generally and not in any particular asset, especially land. This claim could never have stood even under the wider words and cases under the Registration of Titles Enactment, much less under the Land Code. On the facts the valuations by Major Hannay, who is a qualified man and by the Collector of Estate Duty support the Executors' contract. Col. Hornidge's figures are easily impeachable. The existence of the caveats exposes the estate to

(a) An action by the person to whom the Executors have agreed to sell and

(b) To foreclosure by the Chargee

and the Caveats are clearly put on specially to embarrass the Executors in those very ways.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this interlocutory matter I reserved judgment upon a matter of great practical importance, indeed of fundamental importance under the Lands Code—*viz,* what is a caveatable interest. Section 166 is the governing section.

According to the argument for the defendants the beneficiary must be entitled to a registrable interest.

There is no definition of a registrable interest in the Land Code but it seems clear that the only estates that could be registered are terms of years and what are called in the recent English legislation fee-simples absolute. It is also clear that equitable estates cannot be registered.

It is hard to think of anything that could be more obscurely drafted than Section 166, but taking the scheme of the Land Code and of analogous systems it seems clear that the system of caveats was intended to give the same protection to persons with particular interests as was given in England to holders of particular estates and of equitable interests.

If a restrictive interpretation were put upon Section 166 that purpose would be defeated.

If all the persons "grantor" etc., have to be "claiming title to or registrable interest in land" then the words "any person" would have been sufficient and it would not be necessary to set out all that catalogue. On the other hand if the words "any person . . . . land" are to be taken as a separate category, the rest of the sentence becomes ungrammatical nonsense if one reads as one should for the purposes of the present case, if the plaintiffs are right, "a beneficiary . . . . may present a caveat to the effect that such land shall not be transferred." It appears that there is no possibility of any midway construction between one which is so narrow as to be useless or so wide as to be excessively inconvenient. Although I find it difficult to extract any meaning from the section as it stands, examining the system of the Land Code as a whole I consider that the wider meaning should be the one adopted.

In the present case the plaintiffs are undoubtedly beneficiaries, that being so, it does not appear to matter what their interest is. A great deal of argument was addressed to me on the point that their interest was contingent and not vested. This is a very technical matter but I do not think it is of any importance, because persons entitled to a vested or contingent remainder would be equally beneficiaries, and equally not entitled to a registrable interest in land.

And I think that even where land is subject to a trust for sale a person entitled to a contingent interest in the proceeds of sale is still a beneficiary as regards that land. There is I think no place in the F.M.S. for the equitable doctrines of conversion nor do I think it would affect the question.

I consider that the plaintiffs are entitled to enter a caveat. Whether this Court should allow the caveat to continue until the trial of the action is another matter. Here the question is whether a proposed sale of the land affected is a proper transaction I understand that the plaintiffs' allegation is one of undervalue, not of fraud. Judging by the affidavits filed on the two sides the difference of opinion is a serious one. At

the moment I have no views at all as to the merits. In view of the terms of the will, which is the trust instrument in this case, in the absence of fraud it would not appear that the plaintiffs would have any redress once the transaction had gone through; as the whole matter can be brought to trial shortly, I consider that the satisfactory course is to continue the caveat until the matter, which is one of very great importance, can be disposed of at the hearing.

Costs in cause.

Order accordingly.

[REVISIONAL CRIMINAL JURISDICTION]
POYSER, C.J.
April 10, 1939.

PUBLIC PROSECUTOR v. V. MUKAYAN.

[SEPANG CRIMINAL CASE No. 646 of 1939]

Road Traffic Enactment, 1937, S. 12 (3)—Using a private car as a "goods vehicle."

The accused in this case was charged at the Magistrate's Court, Sepang on the 28th December, 1939, with using a private car to carry goods to wit toddy, thereby committing a breach of the condition of his licence, an offence under section 12 (3) of the Road Traffic Enactment, 1937. He pleaded guilty to the charge and was convicted and fined $5/- and costs.

On reference by the Public Prosecutor, Federated Malay States, to the Chief Justice, Federated Malay States.

Held, that in view of the definition of 'goods vehicle' in section 2 of the Road Traffic Enactment, 1937 and in the Motor Vehicles (Registration and Licensing) Rules, 1937 the car in question was not adapted for use as a goods vehicle, and therefore no offence had been committed.

Poyser, C.J.—This case was brought to my notice by the Public Prosecutor. The accused was charged with, and pleaded guilty to, the following offence:—

> "That you at 2.45 p.m. on 28.11.39 in front of Police Station, Sungei Pelek, being the driver of motor car No. S.L. 3508 licensed as a private car did use the vehicle to carry goods to wit toddy and thereby you have committed a breach of the condition of your licence, an offence under section 12 (3) Enactment No. 17/39."

No evidence was recorded, but the following facts appear from a report by the Transport Board.

The motor vehicle S.L. 3508 is an ordinary private car licensed as such. It has in no way been adapted for the carriage of goods, but the owner was in the habit of using it for carrying toddy to various estates. A goods vehicle is defined in the Road Traffic Enactment (section 2) as:—.

> "A motor vehicle constructed or adapted for the carriage of goods or a trailor so constructed or adapted."

There is a further definition in the Motor Vehicles (Registration and Licensing) Rules, viz:—

> "The expression 'goods vehicles' means motor vehicles (including motor cycles weighing more than eight hundred-weight unladen) constructed or adapted for use and used for the haulage or conveyance of goods or burden of any description whether in the course of trade or otherwise."

This car S.L. 3508 does not come within either of these definitions and, therefore, I do not see how the owner could properly be convicted of using his car as a 'goods vehicle' under section 12 (3) of the Enactment, nor did he commit an offence against the provisions of section 82, viz: using a goods vehicle for the carriage of goods without a carrier licence.

The car in question was not adapted for use as a goods vehicle, and therefore no offence was committed.

Acting in revision, therefore, I set aside the conviction, and the fine which has been paid will be refunded to the accused.

Conviction quashed.

[ORIGINAL CIVIL JURISDICTION]
CUSSEN, J.
October 16, 1939.

HENDRIK CHRISTIAAN VAN HOOGSTRATEN
v.
LOW LUM SENG.

[SELANGOR CIVIL SUIT No. 27 of 1939]

Alien enemy—fatal accidents—deceased an alien enemy—claim for damages for loss of expectation of life—suit by administrator—whether maintainable.

The plaintiff as the administrator of the estate of a deceased German national sued the defendant for damages for loss of expectation of life as a result of fatal injuries received by the deceased in a collision between the deceased's car and the defendant's motor lorry. The suit was commenced in March, 1939, placed in the fixing List of 15th July, and fixed for hearing on the 19th September 1939. On the 11th of September 1939, after the outbreak of war, the defence was amended by the addition of a paragraph alleging that the plaintiff was an enemy alien and/or sued on behalf of enemy aliens.

Held, that the Federated Malay States were at war with Germany and therefore the general rule of law that an enemy alien cannot sue as a plaintiff in English Courts applied but that as the action was properly and validly instituted and proceeded so to the commencement of the war it should be stayed during the continuance of hostilities, and not dismissed.

Cases referred to:—

(1) *Alcinous v. Nigreu,* 119 E.R. 84.

(2) *Antoine v. Morsheed,* 128 E.R. 1025.

(3) *Anonymous Case,* 74 E.R. 889.